

Where We Stand on the Takings Issue

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Four Themes

1. Constitutional Doctrine vs. Property Rights Politics.
2. How Do Regulations *Really* Affect Property Values?
3. What is the Lesson of Measure 37?
4. *Kelo*-plus – e.g. California.

Constitutional Doctrine vs. Property Rights Politics

The Law

Palazzolo, "The right to improve property, of course, is subject to the reasonable exercise of state authority, including the enforcement of valid zoning and land-use restrictions."

Lingle, eliminated the "substantially advance" test and announced the "functional equivalence" standard.

Kelo, reaffirmed longstanding doctrine re eminent domain.

Constitutional Doctrine vs. Property Rights Politics

The Politics

Regulatory takings measures: Arizona (2006); Oregon Measure 37 (2004); Florida, Texas, etc. (1990s).

-- More on the horizon?

Reaction to *Kelo* – 40-plus state laws.

No federal legislation adopted or foreseeable

-- except for the Highway Beautification Act

How Do Regulations and Other Government Actions Really Affect Property Values?

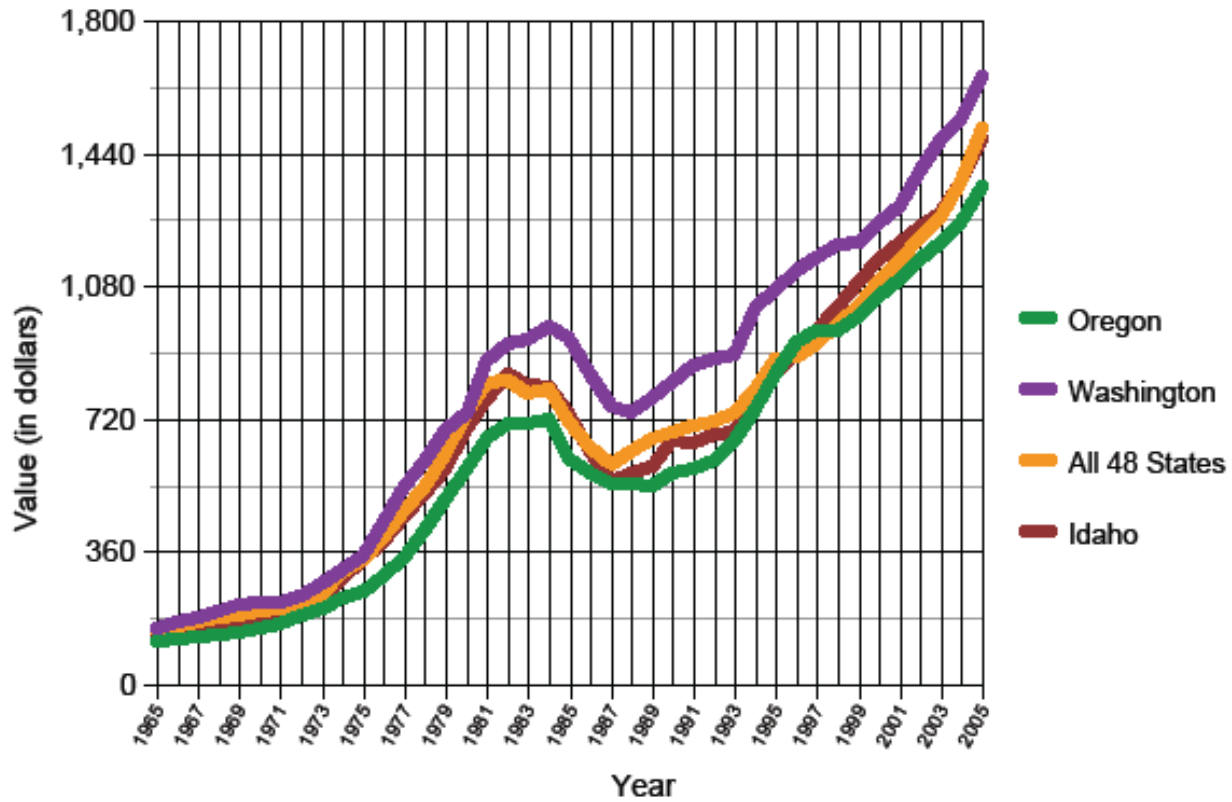
E.g., Property Values and Oregon Measure 37: Exposing the False Premise of Regulation's Harm to Landowners (GELPI 2007)

OIA's Economic Argument for Measure 37

Measure 37 advocate Oregonians in Action contended that the Oregon land use system had "tremendously negative economic consequences on property owners, especially those in the rural areas." OIA stated that "our planning system lowers the value of private property in Oregon by \$5.4 billion a year."

Completely, totally wrong!

Farm Real Estate Average Value Per Acre



Source: Economic Research Service, U.S. Department of Agriculture
January 27, 2006

Figure 2. Property values for representative parcels in Lane County:
Index based on average 1965-1972 value

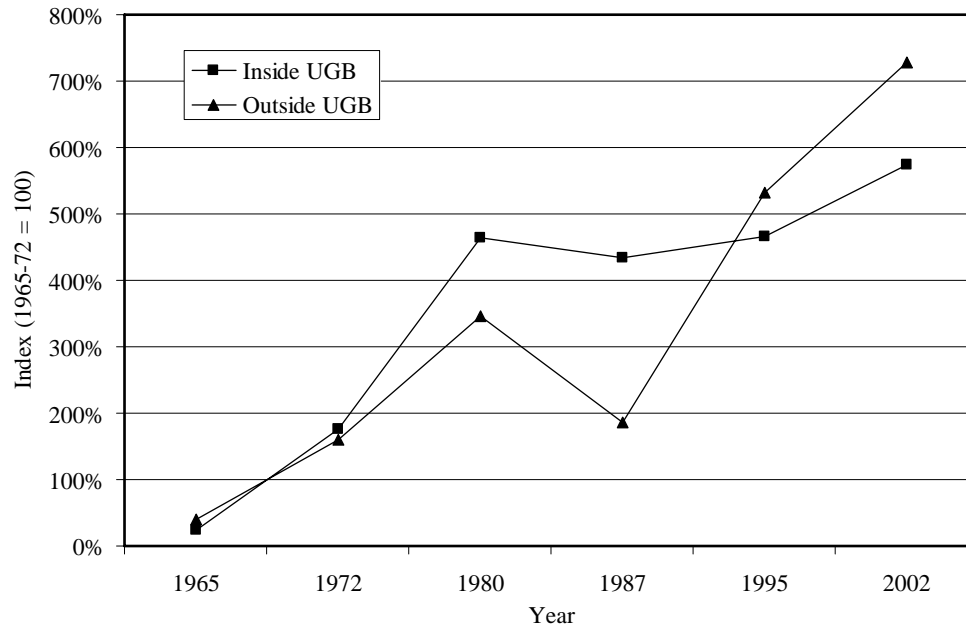


Table 2. Specially Assessed Farmland Tax Reductions and Their Estimated Effects on Market Land Value

	Taxable	Assessed Value	Effective Tax Reduction	Rural Tax Rate	Average Market Value Per Acre	Potential Share
	Assessed Value of Farmland	Without Special Assessment*				Due to Tax Reduction**
Baker	\$51,225,651	\$231,705,980	77.9%	1.08%	\$408	13.8%
Benton	\$64,585,447	\$222,655,051	71.0%	1.28%	\$4,386	10.9%
Clackamas	\$81,326,672	\$923,318,491	91.2%	1.36%	\$10,638	20.4%
Clatsop	\$3,974,445	\$45,375,592	91.2%	1.12%	\$4,643	15.3%
Columbia	\$9,906,850	\$68,063,388	85.4%	1.10%	\$3,589	10.1%
Coos	\$25,316,902	\$62,281,708	59.4%	1.15%	\$2,826	5.1%
Crook	\$35,516,630	\$143,878,647	75.3%	1.27%	\$267	16.8%
Curry	\$17,370,810	\$86,250,600	79.9%	0.77%	\$2,941	10.4%
Deschutes	\$14,951,192	\$165,555,417	91.0%	1.31%	\$3,787	7.8%
Douglas	\$45,168,354	\$271,087,245	83.3%	0.90%	\$1,729	9.9%
Gilliam	\$65,539,275	\$118,830,174	44.8%	1.21%	\$181	12.8%
Grant	\$23,936,828	\$159,492,892	85.0%	1.39%	\$276	19.0%
Harney	\$58,389,839	\$174,607,581	66.6%	1.15%	\$228	10.1%
Hood	\$44,009,806	\$108,768,254	59.5%	1.14%	\$9,889	8.0%
Jackson	\$24,230,283	\$281,873,975	91.4%	1.21%	\$3,174	11.8%
Jefferson	\$36,749,730	\$133,604,637	72.5%	1.56%	\$685	12.6%
Josephine	\$11,691,280	\$89,889,232	87.0%	0.70%	\$4,039	14.6%
Klamath	\$110,309,145	\$289,567,951	61.9%	0.96%	\$875	8.3%
Lake	\$64,474,066	\$244,926,037	73.7%	1.28%	\$425	17.9%
Lane	\$71,753,384	\$214,899,323	66.6%	1.04%	\$4,128	5.4%
Lincoln	\$3,959,840	\$57,667,495	93.1%	1.10%	\$3,578	29.2%
Linn	\$162,529,282	\$607,552,794	73.2%	1.19%	\$1,310	28.3%
Malheur	\$120,351,330	\$415,357,672	71.0%	1.13%	\$418	15.2%
Marion	\$206,266,590	\$1,051,601,738	80.4%	1.17%	\$6,791	12.4%
Morrow	\$78,981,710	\$269,609,272	70.7%	1.46%	\$286	24.4%
Multnomah	\$85,427,130	\$160,993,497	46.9%	1.22%	\$10,643	7.5%
Polk	\$94,008,233	\$363,636,703	74.1%	1.04%	\$3,387	11.9%
Sherman	\$55,497,160	\$115,584,740	52.0%	1.69%	\$323	17.3%
Tillamook	\$24,108,883	\$87,718,078	72.5%	0.98%	\$3,792	12.9%
Umatilla	\$227,026,715	\$627,049,031	63.8%	1.29%	\$502	19.3%
Union	\$53,201,581	\$190,968,626	72.1%	1.01%	\$525	13.4%
Wallowa	\$32,205,990	\$252,779,558	87.3%	1.20%	\$451	22.4%
Wasco	\$94,021,650	\$188,454,408	50.1%	1.41%	\$400	10.8%
Washington	\$70,859,630	\$837,158,870	91.5%	1.46%	\$10,649	21.6%
Wheeler	\$20,891,193	\$81,043,043	74.2%	1.53%	\$287	12.3%
Yamhill	\$63,043,308	\$404,820,442	84.4%	1.26%	\$5,474	12.8%
Oregon	\$2,252,806,814	\$9,766,506,878	76.9%	1.21%	\$1,027	14.2%

Source: 2003-2004 tax data reported in Richmond and Houchen (2007).

* Estimate of market value subject to Measure 50 limits on annual growth of property assessed values.

** When annual tax reduction benefits are capitalized into land value at 4 percent real interest rate; uncertainty about the continuation of these programs and other factors may result in smaller effects.

Table 3. Value of Agricultural Subsidies as Component of Market Value of Oregon Agricultural Lands

(2002 dollars)

	Average Annual Commodity Subsidy	Acres of Agricultural Land	Subsidy/Acre	Capitalized Value of Subsidy/Acre	Market Value of Agricultural Land/Acre	Potential Share of Land Value Due to Subsidy
Baker	\$722,715	869,523	\$0.83	\$20.78	\$546	3.81%
Benton	\$523,724	130,203	\$4.02	\$100.56	\$3,854	2.61%
Clackamas	\$345,074	215,210	\$1.60	\$40.09	\$9,600	0.42%
Clatsop	\$45,329	22,234	\$2.04	\$50.97	\$2,776	1.84%
Columbia	\$35,062	62,398	\$0.56	\$14.05	\$3,813	0.37%
Coos	\$142,345	144,077	\$0.99	\$24.70	\$3,364	0.73%
Crook	\$258,825	937,628	\$0.28	\$6.90	\$531	1.30%
Curry	\$92,701	70,459	\$1.32	\$32.89	\$1,949	1.69%
Deschutes	\$115,807	138,226	\$0.84	\$20.95	\$5,172	0.40%
Douglas	\$277,034	390,140	\$0.71	\$17.75	\$2,060	0.86%
Gilliam	\$3,361,838	642,996	\$5.23	\$130.71	\$305	42.86%
Grant	\$19,286	892,400	\$0.02	\$0.54	\$306	0.18%
Harney	\$142,499	1,575,020	\$0.09	\$2.26	\$289	0.78%
Hood River	\$131,985	29,064	\$4.54	\$113.53	\$9,364	1.21%
Jackson	\$105,208	252,185	\$0.42	\$10.43	\$2,824	0.37%
Jefferson	\$1,508,055	701,440	\$2.15	\$53.75	\$561	9.58%
Josephine	\$95,086	32,370	\$2.94	\$73.44	\$4,153	1.77%
Klamath	\$1,476,999	702,951	\$2.10	\$52.53	\$1,012	5.19%
Lake	\$268,004	747,888	\$0.36	\$8.96	\$487	1.84%
Lane	\$483,606	234,807	\$2.06	\$51.49	\$4,572	1.13%
Lincoln	\$6,999	32,791	\$0.21	\$5.34	\$2,607	0.20%
Linn	\$835,432	385,589	\$2.17	\$54.17	\$2,849	1.90%
Malheur	\$4,272,090	1,175,280	\$3.63	\$90.87	\$537	16.92%
Marion	\$1,396,120	341,051	\$4.09	\$102.34	\$5,107	2.00%
Morrow	\$6,304,178	1,124,593	\$5.61	\$140.14	\$365	38.40%
Multnomah	\$51,398	34,329	\$1.50	\$37.43	\$10,876	0.34%
Polk	\$1,341,730	168,881	\$7.94	\$198.62	\$4,948	4.01%
Sherman	\$4,638,282	507,705	\$9.14	\$228.39	\$368	62.06%
Tillamook	\$1,065,395	39,526	\$26.95	\$673.86	\$5,259	12.81%
Umatilla	\$15,394,779	1,330,932	\$11.57	\$289.17	\$765	37.80%
Union	\$2,916,694	478,411	\$6.10	\$152.42	\$1,044	14.60%
Wallowa	\$1,344,086	518,110	\$2.59	\$64.86	\$614	10.56%
Wasco	\$3,454,663	1,086,817	\$3.18	\$79.47	\$394	20.17%
Washington	\$1,830,150	130,683	\$14.00	\$350.11	\$7,294	4.80%
Wheeler	\$46,507	738,207	\$0.06	\$1.57	\$274	0.57%
Yamhill	\$2,007,743	196,298	\$10.23	\$255.70	\$6,885	3.71%
Oregon	\$57,057,428	17,080,422	\$3.34	\$83.51	\$1,202	6.95%

Sources: Economic Research Service, U.S. Department of Agriculture (www.ers.usda.gov/data)
 Environmental Working Group's Farm Subsidy Database (www.ewg.org/farm)

Measure 37's Mistaken Economics

Measure 37 "compensation" based on value of special exemption, with no threshold.

Ignores reciprocity of advantage generated by regulation.

Ignores scarcity effect produced by regulation.

Ignores positive effects of government "givings."

Lesson of Oregon Measure 37

Pay or waive mandate = deregulation/policy chaos.

7500-plus claims (PSU, Institute of Portland Metropolitan Studies)

One example of a financial payment rather than waiver.

Why?

- Exorbitant compensation awards
- Constrained state and local budgets

Kelo- plus strategy

2005 *Kelo* decision and Oregon's 2005 adoption of Measure 37 created takings perfect storm in 2006.

Kelo-plus strategy failed in half a dozen states – all except Arizona.

Back in California in June 2008, Jarvis Measure.

- Permits taking of private property only for a public use and upon payment of just compensation.
- "Private property may no be taken or damaged for private use."
- "Private use" means "transfer of ownership, occupancy or use or private property or associated property rights to a public agency for the consumption of natural resources or for the same or a substantially similar use as that made by the private owner."

What Next?

- October 2007, voters in Mat Su Borough, Alaska consider a Measure 37 copycat.
- November 2007 Oregonians vote on Measure 49, cutting back on Measure 37.
- June 2008, Californians vote on Jarvis *Kelo*-plus measure and possible counter-measure.